

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

INNOCENT BYSTANDER, WRITE)	
TREATAGE MUSIC, UNIVERSAL-)	
POLYGRAM INTERNATIONAL)	
PUBLISHING, INC., MIGHTY UNDERDOG)	
MUSIC, SONY/ATV TUNES LLC, EMI)	
APRIL MUSIC INC., LELLOW)	
PRODUCTIONS, DESMOBILE, INC., BON)	C.A. No.
JOVI PUBLISHING AND AGGRESSIVE)	
MUSIC,)	
)	
Plaintiffs,)	
)	
v.)	
)	
WALTZING MATILDA'S, INC. AND LEE)	
BUZALEK,)	
)	
Defendants.)	
)	

COMPLAINT

Plaintiffs, complaining of the Defendants, by Richards, Layton & Finger, their attorney, allege:

1. This is a suit for copyright infringement under Title 17, U.S.C. Jurisdiction of this Court is based upon Title 28, U.S.C., Section 1338(a).
2. Plaintiffs allege five (5) causes of action for copyright infringement based on the Defendants' public performances of copyrighted musical compositions. SCHEDULE A annexed to the Complaint sets forth in summary form the allegations hereinafter made with respect to the Plaintiffs, their copyrighted musical compositions, and Defendants' act of infringement.

3. Plaintiffs named in Column 2 (all references to columns are to columns in SCHEDULE A) are the owners of the copyrights in the works listed in Column 3, and are properly joined in this complaint under Rule 20, Fed.R.Civ.P.

4. Defendant Waltzing Matilda's, Inc. is a Delaware corporation which did at the times hereinafter mentioned and still does own, control, manage, operate and maintain a place of business for public entertainment, accommodation, amusement and refreshment known as Matilda's Pub & Barbie, located at 801 S. College Avenue, in Newark, in the State of Delaware.

5. Defendant Lee Buzalek is a resident of this District and, at all times hereinafter mentioned was and still is Director and President of Defendant Waltzing Matilda's, Inc., with primary responsibility for the control, management, operation and maintenance of the affairs of said corporation. The acts hereinafter complained of were done with his active assistance, cooperation, acquiescence and procurement, and he derives financial benefit therefrom.

6. Musical compositions were and are publicly performed at said place of business.

7. The original musical compositions listed in Column 3 were created and written by the persons named in Column 4.

8. Each composition was published on the date stated in Column 5, and since the date of publication has been printed and published in strict conformity with Title 17, U.S.C.

9. The Plaintiffs named in each cause of action, including their predecessors in interest, if any, complied in all respects with Title 17, U.S.C., and secured the exclusive rights and privileges in and to the copyright of each composition listed in Column 3, and received from the Register of Copyrights a Certificate of Registration, identified as set forth on Column 6.

10. Defendants on the dates specified in Column 7, and upon information and belief, at other times prior and subsequent thereto, infringed the copyright in each composition named

in Column 3 by giving public performances of the compositions on Defendants' premises, for the entertainment and amusement of the patrons attending said premises, and Defendants threaten to continue such infringing performances.

11. The performances of the Plaintiffs' copyrighted musical compositions on the dates specified in Column 7 on Defendants' premises were unauthorized: neither Defendants, nor any of the Defendants' agents, servants or employees, nor any performer was licensed by, or otherwise received permission from any Plaintiff or any agent, servant or employee of any Plaintiff to give such performances.

12. In undertaking the conduct complained of in this action, Defendants knowingly and intentionally violated Plaintiffs' rights. Defendants' knowledge and intent are established by the following facts:

(a) Defendants have not sought or obtained a license agreement from Plaintiffs or the American Society of Composers, Authors and Publishers (ASCAP), a performing rights licensing organization of which all Plaintiffs are members.

(b) Despite numerous letters and other contacts by ASCAP representatives informing the Defendants of their liability under the United States Copyright Law, Defendants have continued to perform copyrighted music without permission during the hours that Defendants' establishment is open to the public for business and presenting musical entertainment.

(c) The many unauthorized performances at Matilda's Pub & Barbie include the performances of the five copyrighted musical compositions upon which this action is based.

13. At the times of the acts of infringement complained of, the Plaintiff named in each cause of action was the owner of the copyright in the composition therein named.

14. The said wrongful acts of the Defendants have caused and are causing great injury to the Plaintiffs, which damage cannot be accurately computed, and unless this Court restrains the Defendants from the further commission of said acts, said Plaintiffs will suffer irreparable injury, for all of which the said Plaintiffs are without any adequate remedy at law.

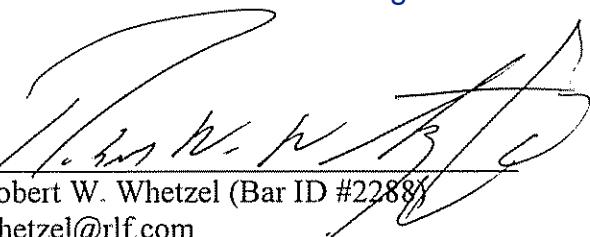
WHEREFORE, Plaintiffs pray:

I. That Defendants and all persons acting under the direction, control, permission or authority of Defendants be enjoined and restrained permanently from publicly performing the aforementioned compositions or any of them from causing or permitting the said compositions to be publicly performed in Defendants' said premises, or in any place owned, controlled or conducted by Defendants, and from aiding or abetting the public performance of such compositions in any such place or otherwise.

II. That Defendants be decreed to pay such statutory damages as to the Court shall appear just, as specified in 17 U.S.C. § 504(c)(1), namely, not more than Thirty Thousand Dollars (\$30,000) nor less than Seven Hundred And Fifty Dollars (\$750) in each cause of action herein.

III. That Defendants be decreed to pay the costs of this action and that a reasonable attorney's fee be allowed as part of the costs.

IV. For such other and further relief as may be just and equitable.



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Attorneys for Plaintiffs

Dated: 3/24/08

SCHEDULE "A"

1	2	3	4	5	6	7
Cause of Action	Plaintiff	Musical Composition	Writers	Date of Publication	Certificate of Registration Number	Date of Known Infringement
1	Innocent Bystander, Write Treatage Music and Universal-Polygram International Publishing, Inc.	Even Flow	Eddie Vedder, Stone Gossard	8/27/91	PA 544-552	7/30/07
2	Mighty Underdog Music, Sony/ATV Tunes, LLC	Before He Cheats	Josh Kear, Chris Tompkins	11/15/05	PA 1-345-125	7/30/07
3	EMI April Music, Inc. and Lellow Productions	Fallin'	Alicia Augello-Cook (PKA Alicia Keys)	7/10/01	PA 1-065-075	7/30/07
4	EMI April Music, Inc., Desmobile, Inc., Bon Jovi Publishing, Universal-Polygram International Publishing, Inc. and Aggressive Music	Livin' On A Prayer	Desmond Child, Jon Bon Jovi, Richie Sambora	8/11/86	PA 305-252	7/31/07
5	Universal-Polygram International Publishing, Inc.	Toxic	Britney Spears, Pontus Johan Winnberg, Christian Karlsson, Cathy Dennis	11/17/03	PA 1-287-636	7/30/07

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

I. (a) PLAINTIFFS - Innocent Bystander; Write Treatage Music; Universal Polygram International Publishing, Inc.; Mighty Underdog Music; Sony/ATV Tunes, LLC; EMI April Music Inc.; Lellow Productions; Desmobile, Inc.; Bon Jovi Publishing; and Aggressive Music

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Robert W. Whetzel
Todd A. Coomes
Richards Layton & Finger
One Rodney Square
P.O. Box 551,
Wilmington, DE 19899
(302) 651-7700

DEFENDANTS - Waltzing Matilda's Inc. and Lee Buzalek

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

U.S. Government Plaintiff • 3 Federal Question (U.S. Government Not a Party)

U.S. Government Defendant Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF	
Citizen of This State	<input type="checkbox"/> O 1	<input type="checkbox"/> O 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> O 4	<input type="checkbox"/> O 4
Citizen of Another State	<input type="checkbox"/> O 2	<input type="checkbox"/> O 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> O 5	<input type="checkbox"/> O 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> O 3	<input type="checkbox"/> O 3	Foreign Nation	<input type="checkbox"/> O 6	<input type="checkbox"/> O 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FOREIGN/RE/ PENALTY	RANKRUPTCY	OTHER STATUTES
O 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	O 422 Appeal 28 USC 158	O 400 State Reapportionment
O 120 Marine	O 310 Airplane	O 362 Personal Injury - Med. Malpractice	O 423 Withdrawal 28 USC 157	O 410 Antitrust
O 130 Miller Act	O 315 Airplane Product Liability	O 365 Personal Injury - Product Liability	PROPERTY RIGHTS	O 430 Banks and Banking
O 140 Negotiable Instrument	O 320 Assault, Libel & Slander	O 368 Asbestos Personal Injury Product Liability	x 820 Copyrights	O 450 Commerce
O 150 Recovery of Overpayment & Enforcement of Judgment	O 330 Federal Employers' Liability	O 370 Other Fraud	O 830 Patent	O 460 Deportation
O 151 Medicare Act	O 340 Marine Liability	O 371 Truth in Lending	O 840 Trademark	O 470 Racketeer Influenced and Corrupt Organizations
O 152 Recovery of Defaulted Student Loans (Ex. Veterans)	O 345 Marine Product Liability	O 380 Other Personal Property Damage		O 480 Consumer Credit
O 153 Recovery of Overpayment of Veteran's Benefits	O 350 Motor Vehicle	O 385 Property Damage		O 490 Cable/Sat TV
O 160 Stockholders' Suits	O 355 Motor Vehicle Product Liability	O 395 Product Liability		O 810 Selective Service
O 190 Other Contract	O 360 Other Personal Injury			O 850 Securities/Commodities/ Exchange
O 195 Contract Product Liability				O 875 Customer Challenge 12 USC 3410
O 196 Franchise				O 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS	O 891 Agricultural Acts
O 210 Land Condemnation	O 441 Voting	O 510 Motions to Vacate Sentence	O 861 HIA (1395f)	O 892 Economic Stabilization Act
O 220 Foreclosure	O 442 Employment	Habeas Corpus:	O 862 Black Lung (923)	O 893 Environmental Matters
O 230 Rent Lease & Ejectment	O 443 Housing/ Accommodations	O 530 General	O 863 DWIC/DIWW (405(g))	O 894 Energy Allocation Act
O 240 Torts to Land	O 444 Welfare	O 535 Death Penalty	O 864 SSID Title XVI	O 895 Freedom of Information Act
O 245 Tort Product Liability	O 445 Amer w/Disabilities - Employment	O 540 Mandamus & Other	O 865 RSI (405(g))	O 900 Appeal of Fee Determination
O 290 All Other Real Property	O 446 Amer w/Disabilities - Other	O 550 Civil Rights		Under Equal Access to Justice
	O 440 Other Civil Rights	O 555 Prison Condition		O 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or 5 Transferred from Multidistrict Litigation 6 Multidistrict Litigation 7 Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION: Suit for copyright infringement based upon Defendants' public performances of copyrighted musical compositions.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND: Statutory damages and injunction CHECK YES only if demanded in complaint: JURY DEMAND: O Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE

DOCKET NUMBER

DATE 3-24-08

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT #

AMOUNT

APPLYING IFFP

JUDGE

MAG JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

(a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)"

I. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff (1) Jurisdiction based on 28 U.S.C. 1335 and 1338. Suits by agencies and officers of the United States are included here.

United States defendant (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and boxes 1 or 2 should be marked.

Diversity of citizenship (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

II. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

V. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

VI. Origin. Place an "X" in one of the seven boxes.

Original Proceedings (1) Cases which originate in the United States district courts

Removed from State Court (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment (7) Check this box for an appeal from a magistrate judge's decision.

VII. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statute unless diversity.

Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VIII. Requested in Complaint. Class Action Place an "X" in this box if you are filing a class action under Rule 23, F.R.C.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand Check the appropriate box to indicate whether or not a jury is being demanded.

IX. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.